



## DEPARTMENT OF THE TREASURY

### Community Development Financial Institutions Fund

[CDFI-2022-0001]

#### Minority Lending Institution Designation Criteria

**ACTION:** Notice and request for comment.

**SUMMARY:** The Community Development Financial Institutions Fund (CDFI Fund) at the Department of the Treasury requests comments from the public regarding the criteria to designate a certified Community Development Financial Institution (CDFI) as a Minority Lending Institution (MLI). Unless otherwise noted, capitalized terms found in this notice are defined in the regulations that govern the CDFI Program.

**DATES:** Written comments must be received on or before [INSERT DATE 120 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] to be assured of consideration.

**ADDRESSES:** You may submit comments via the Federal eRulemaking Portal:

[www.regulations.gov](https://www.regulations.gov). Follow the instructions on the website for submitting comments. In general, all comments will be available for inspection at [www.regulations.gov](https://www.regulations.gov). Comments, including attachments and other supporting materials, are part of the public record. Do not submit any information in your comments or supporting materials that you consider confidential or inappropriate for public disclosure.

For further information, contact Jeff Merkowitz, Senior Advisor, CDFI Fund, 1500 Pennsylvania Avenue, NW, Washington, DC 20220 or by email at [mli@cdfi.treas.gov](mailto:mli@cdfi.treas.gov). Other information regarding the CDFI Fund and its programs may be obtained through the CDFI Fund's website at [www.cdfifund.gov](https://www.cdfifund.gov).

**SUPPLEMENTARY INFORMATION:** Pursuant to section 523 of Division N of the Consolidated Appropriations Act, 2021, Public Law 116-260 (the Act), an MLI is a CDFI that (i) directs a majority of its financial products to minority populations or communities; and (ii) either

(a) is a Minority Depository Institution (MDI) or (b) demonstrates accountability to Minority populations. Although no federal funding will be associated with an MLI designation at this time, the CDFI Fund seeks to implement the designation for those CDFIs that wish to be recognized for their high levels of service and accountability to Minority populations, as well as to identify barriers such CDFIs experience in providing access to capital. A list of designated MLIs will be made available to the public via the CDFI Fund website.

Through this request for comment, the CDFI Fund seeks feedback from the public on certain aspects of the criteria and process the CDFI Fund will use to designate a CDFI as an MLI, as listed in Section I. The CDFI Fund also seeks any additional information beyond these questions that members of the public believe would assist the CDFI Fund in establishing policies and procedures related to MLI designation. The CDFI Fund will consider the feedback received through this request for comment prior to establishing a final definition and designation process.

## **I. Definitions**

*A. Minority:* The Act defines the term “minority” as “any Black American, Hispanic American, Asian American, Native American, Native Alaskan, Native Hawaiian, or Pacific Islander.” For purposes of designating an MLI, the CDFI Fund proposes to rely on the following definitions established by the 1997 Office of Management and Budget (OMB) standards on race and ethnicity:

1. Native American/American Indian or Alaska Native. A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.
2. Asian. A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
3. Black or African American. A person having origins in any of the black racial groups of Africa.

4. Hispanic or Latino. A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.

5. Native Hawaiian or Other Pacific Islander. A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Because of the Act's requirement to include "any" members of the listed Minority populations, this definition differs slightly from some of the definitions for Native populations used by the CDFI Fund in its other programs, most significantly in the absence of any residential requirement for Native Alaskans or Native Hawaiians. For example, for Target Market purposes and as part of the Native Initiatives program, the CDFI Fund recognizes the following Other Targeted Populations: "Native American/American Indian with maintained tribal affiliation or community attachment, Native Alaskan residing in Alaska with maintained tribal affiliation or community attachment, Native Hawaiian residing in Hawaii."

*B. Majority-Minority Census Tracts:* For purposes of designating an MLI, the CDFI Fund proposes to define a Majority-Minority Census Tract as those census tracts or equivalents in which the sum of the tract's non-duplicative population of Minority persons is greater than 50% of the census tract's total population, as determined by the U.S. Census Bureau and identified by the CDFI Fund on its website in the table of all census tracts or equivalents that meet this definition based on the 2011-2015 American Community Survey (ACS) (see <https://www.cdfifund.gov/documents/geographic-reports>). The census data upon which the CDFI Fund proposes to rely for this purpose will be updated periodically based upon the most recent decennial census or, for a mid-decade update, using the five-year ACS. At this time, the CDFI Fund anticipates that it will implement the use of the 2016-2020 ACS data by the end of the 2022 calendar year.

1. Are the proposed definitions of "Minority" and "Majority-Minority Census Tracts" appropriate for the purposes of designating an MLI?

## **II. Designation Criteria**

In accordance with the Act's definition of MLI, the CDFI Fund is considering the following criteria to designate a CDFI as an MLI.

*A. CDFI Status:* To receive the MLI designation, the Act requires that an entity be certified as a CDFI, meaning that the entity must meet all applicable CDFI certification requirements. CDFI certification application requirements and supplemental information can be found on the CDFI Fund website at <https://www.cdfifund.gov/programs-training/certification/cdfi>.

*B. Financial Products directed to Minorities and Majority-Minority Census Tracts:* To fulfill the statutory requirement that a majority of an MLI's financial products are directed at Minorities or Majority-Minority Census Tracts or equivalent, the CDFI Fund proposes to seek evidence that an applicant has directed greater than 50% of both the number and dollar volume of its arm's-length, on-balance sheet Financial Products to Minorities (including minority-owned businesses) or Majority-Minority Census Tracts over the most recently completed 36 months upon initial designation, and on a three-year rolling average over each subsequent, completed fiscal year to maintain the MLI designation. Entities with less than three years of financing activity will be measured based upon the full history of their financing activity.

1. Is a rolling 36-month period the appropriate length of time to assess an applicant's track record of serving Minorities or Majority-Minority Census Tracts for the purposes of designating a CDFI an MLI? Should the CDFI Fund instead require applicants to meet this requirement using some other time period, either upon initial designation or to maintain the designation? If yes, what is an appropriate time period?
2. The Act requires that an MLI must direct a majority of its financial products "at minorities or majority-minority census tracts or equivalents." Should the CDFI Fund assess Financial Products delivered to legal entities that are not owned or controlled by Minority individuals to finance projects such as affordable housing, child care centers, charter schools, or health centers that are not located within a Majority-Minority Census Tract but whose end-beneficiaries (e.g., customers, residents, or employees) are members of a Minority population? If yes, how?

*C. Accountability:* In addition to the above criteria, the Act requires that an MLI be a CDFI that is recognized as an MDI or meets standards for accountability to minority populations as determined by the CDFI Fund. The Act recognizes MDIs defined in section 308(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1463 note), or otherwise considered to be an MDI by the appropriate Federal banking agency, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), or by the National Credit Union Administration, as applicable.

Under current practice, a CDFI must demonstrate accountability to the Target Market it serves through representation on its governing board or advisory board. For a CDFI serving a Minority Targeted Population, a board member must be a member of that Minority population to count towards the accountability requirements. When assessing whether an advisory board provides accountability to Minority populations, the CDFI Fund reviews each board member and also considers the following factors: how often the advisory board meets (must be at least bi-annually); how the advisory board members were selected; how advisory board members obtain input from Minority populations; and how the advisory board input is incorporated into the organization's governing board's decision-making processes.

The CDFI Fund is considering whether non-MDI CDFIs seeking MLI status should demonstrate accountability to Minority populations through Minority representation on the CDFI's governing board or advisory board. The CDFI Fund seeks comment on whether to require that a *majority* of a CDFI's governing board members should be members of a Minority population and whether CDFIs should have options to meet the accountability standards through loan committees (committees delegated authority by the governing board to approve or disapprove loan applications) or a non-governing advisory board.

In addition, the CDFI Fund is considering whether to allow a CDFI's executive staff to demonstrate accountability to Minority populations for the purpose of an MLI designation. Currently, for CDFI certification purposes, principals or staff members of an applicant

organization or its Subsidiaries, Affiliates, or investors, or whose family members are principals or staff members, cannot be used to demonstrate Target Market accountability, as it is considered a conflict of interest.

For example, one approach could be for the CDFI Fund to establish the following options to meet the accountability criteria for designating an MLI.

*Option One:* Greater than 50 percent of the governing board or ownership of an organization is made up of individuals who are members of Minority populations;

*Option Two:* Between 33 percent and 50 percent of the governing board or ownership of an organization is made up of individuals who are members of Minority populations, *and* at least two of the following additional criteria are met: the chief executive officer of the organization is a member of a Minority population; greater than 50 percent of the executive staff, other than the chief executive officer, are members of Minority populations; greater than 50 percent of the loan committee members are members of Minority populations; and greater than 50 percent of the organization's advisory board members are members of Minority populations.

1. Should a majority (greater than 50 percent) of a CDFI's governing board members be required to be members of Minority populations to demonstrate accountability to Minority populations? Specifically, the CDFI Fund requests comments on whether it should set a standard higher than the 33 percent level proposed separately for Native CDFI designation and for general Target Market accountability as part of the CDFI Fund certification standards (see <https://www.cdfifund.gov/programs-training/certification/cdfi/certification-pra>).

2. Should there be options for CDFIs to meet the accountability requirement through a lower threshold of Minority representation on a CDFI's governing board? If yes, what level of representation is appropriate?

3. Alternatively, is a standard of 33 percent Minority representation for a CDFI's governing board members in combination with 66 percent for a CDFI's advisory board (with at least one

governing board member serving on the advisory board) appropriate to demonstrate accountability to Minority populations?

4. Given the regulatory requirements for the governing board composition of regulated financial institutions, as well as the absence of governing boards for some privately held entities, should there also be an option for non-MDI regulated entities or privately held entities without a governing board to demonstrate accountability for the purposes of MLI designation? If yes, what standard should be used?

5. Should the CDFI Fund allow a CDFI's principals or executive staff (meaning all directors and executive officers vested with the powers to manage and supervise the day-to-day affairs of an organization) to demonstrate accountability to Minority populations, either as an alternative to accountability through a governing board or in combination with a lower threshold of representative governing board members? If yes:

a. Which and how many of a CDFI's executive staff members should be necessary to demonstrate accountability to Minority populations, and in what combination with the CDFI's governing board?

b. The use of executive staff or principals to demonstrate accountability to a Minority population may be undermined due to the principal's or executive staff member's financial relationship to the organization. Are there any appropriate safeguards to mitigate such a conflict between the interests of a principal or executive staff member and the Minority community to which they are to be accountable? If yes, what are some safeguards?

6. Should the CDFI Fund allow the ownership of a CDFI to demonstrate accountability to Minority populations, either as an alternative to accountability through a governing board or in combination with a lower threshold of representative governing board members? If yes, should accountability mirror the MDI definition (i.e., 51 percent or more of the voting stock is owned by minority individuals) to be counted in determining minority ownership? If ownership should be

permitted to demonstrate accountability only in combination with some level of governing board representation, what should that threshold be?

7. Should the CDFI Fund allow the composition of a CDFI's loan committees to demonstrate accountability to Minority populations, either as an alternative to accountability through a governing board or in combination with a lower threshold of representative governing board members? If yes, how many members of a CDFI's loan committee should be necessary to demonstrate accountability to Minority populations, and in what combination with the CDFI's governing board?

8. If a CDFI serves multiple Minority populations, for purposes of the MLI designation should it be required to have board or other representation reflective of each of the Minority populations it serves? If yes, how should the share of board or other representation for each Minority population the CDFI serves be determined?

9. The CDFI Fund is also considering the relationship between the standards for designation as an MLI and those for designation as a Native CDFI. To what extent should the two align?

a. Should status as a Native MDI automatically qualify as an accountability criterion for designation as a Native CDFI?

b. Should the status as a Native MDI automatically qualify as an accountability criterion if the CDFI also serves other Minority populations?

10. Should MLIs be able to demonstrate accountability through means other than those identified above? If yes, how?

### **III. General Designation Questions for Public Comment**

In addition to the questions above, the CDFI Fund welcomes public comment on any aspect of the process or substance of the MLI designation. Is there additional information that the CDFI Fund should consider in the MLI designation process? If yes, please describe.

**Authority:** 12 USC 4701 et seq.; 12 CFR 1805; Pub. L. No. 116-260.



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